

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB522)

Received: **02/08/2012**

Received By: **agary**

Wanted: **As time permits**

Companion to LRB:

For: **Penny Bernard Schaber (608) 266-3070**

By/Representing: **Eric Koch**

May Contact:

Drafter: **agary**

Subject: **Transportation - highways**
Transportation - other

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Rep.BernardSchaber@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Contracting for engineering services; false claims

Instructions:

See attached; wants to eliminate striking in 84.01 (13); add SB-447 provisions per e-mail; also report must be distributed to full legislature and published on DOT's web site

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 02/08/2012	kfollett 02/13/2012		_____			State
/1			phenry 02/13/2012	_____	sbasford 02/13/2012	sbasford 02/13/2012	

FE Sent For:

<END>

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/?	agary	1/15f 2/13	2/13 ph	2/13 ph			

FE Sent For:

<END>

Gary, Aaron

From: Koch, Eric
Sent: Wednesday, February 08, 2012 12:54 PM
To: Gary, Aaron
Subject: RE: Amendment for AB 522

Aaron,

We would like it to be drafted as a substitute amendment.

- Eric

From: Gary, Aaron
Sent: Wednesday, February 08, 2012 12:28 PM
To: Koch, Eric
Subject: RE: Amendment for AB 522

Eric,

This could be a substitute amendment or a simple amendment. Do you have a preference as to which? Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Koch, Eric
Sent: Wednesday, February 08, 2012 11:58 AM
To: Gary, Aaron
Subject: Amendment for AB 522

Hi Gary,

I believe this would need to be a substitute amendment for AB 522. The changes we would like made are as we spoke about before.

To undo the deletions of lines 7-13 in AB 522, which deletes part of 84.01 (13). Re-insert those lines into the statute. In addition we would like to include the references to other chapters in lines 5 & 6 to include a reference to 16.78, 16.87, 16.875, 16.771 and 16.871.

16.771 and 16.871 will need to be created using the language from 2009 SB 447 Section 18 and Section 19 which are on page 12-13 and the language is below.

<< File: SB-447.pdf >>

"SECTION 18. 16.771 of the statutes is created to read:

16.771 False claims. Whoever knowingly presents or causes to be presented a false claim for payment under any contract or order for materials, supplies, equipment, or contractual services to be provided to an agency shall forfeit not less than \$5,000 nor more than \$10,000, plus 3 times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The attorney general may bring an action on behalf of the state to recover any forfeiture incurred under this section.

SECTION 19. 16.871 of the statutes is created to read:

16.871 False claims. (1) In this section:

- (a) "Agency" has the meaning given in s. 16.70 (1e).
- (b) "Construction work" has the meaning given in s. 16.87 (1) (a).
- (c) "Limited trades work" has the meaning given in s. 16.70 (7).
- (2) Whoever knowingly presents or causes to be presented a false claim under any contract for construction work or limited trades work, or for engineering or architectural services, to be provided to any agency shall forfeit not less than \$5,000 nor more than \$10,000, plus 3 times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The attorney general may bring an action on behalf of the state to recover any forfeiture incurred under this subsection."

Again, reminder that this is a rush amendment as the bill is likely to be voted on next Tuesday.

Eric Koch

Office of Rep. Penny Bernard Schaber
57th Assembly District
Phone: 608.266.3070
Toll Free: 888.534.0057



State of Wisconsin
2011 - 2012 LEGISLATURE

in 2/8
needed
by 2/13



LRB-3583/1

ARG:kjf&cjs:ph

0319/1

Assembly Substitute Amendment, ~~staff~~
TO 2011 ASSEMBLY BILL 522

RMNR

February 3, 2012 - Introduced by Representatives HONADEL, KRUG, BALLWEG, BIES, ENDSLEY, LEMAHIEU, MARKLEIN, A OTT, SPANBAUER, STONE, STRACHOTA, STROEBEL and VAN ROY, cosponsored by Senator OLSEN. Referred to Committee on Transportation.

Regen

1 AN ACT *to amend* 84.01 (13); and *to create* 84.01 (13m) of the statutes; relating
2 to the engagement of engineering and similar services by the Department of
3 Transportation.

the Department of Transportation (DOT)

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) may engage engineering, consulting, surveying, or other specialized services and this engagement of services is exempt from certain provisions of law relating to state procurement. Any engagement of services involving an expenditure of \$3,000 or more must be by formal contract approved by the governor. For an engagement of services of more than \$25,000, DOT must conduct a uniform cost-benefit analysis before the engagement and must review periodically, and before any renewal, the continued appropriateness of the engagement.

This bill eliminates the requirements that DOT: 1) conduct a uniform cost-benefit analysis before an engagement of engineering, consulting, surveying, or other specialized services involving an expenditure of more than \$25,000; and 2) review periodically and before any renewal the continued appropriateness of such an engagement. The bill also requires DOT to annually submit a report to the legislature limited to identifying, for the preceding fiscal year: 1) the total cost of engineering services provided on projects performed predominantly by DOT employees; 2) the total cost of engineering services provided on projects performed predominantly through an engagement of engineering services; and 3) the total cost of engineering services provided on projects performed jointly by DOT employees and

it
, and publish on DOT's Web site, that is

ASSEMBLY BILL 522

through an engagement of engineering services. The ~~bill~~^{substitute amendment} also includes requirements for DOT to follow in computing the total cost of engineering services.

~~For further information see the state fiscal estimate, which will be printed as an appendix to this bill.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

[#]
SECTION 1. 84.01 (13) of the statutes is amended to read:

84.01 (13) ENGINEERING SERVICES. The department may engage such engineering, consulting, surveying, or other specialized services as it deems advisable. Any engagement of services under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss. 16.528, 16.752, 16.753, and 16.754 apply to such engagement. Any engagement involving an expenditure of \$3,000 or more shall be by formal contract approved by the governor. The department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed engagement under this subsection that involves an estimated expenditure of more than \$25,000 in accordance with standards prescribed by rule of the department. The department shall review periodically, and before any renewal, the continued appropriateness of contracting pursuant to each engagement under this subsection that involves an estimated expenditure of more than \$25,000.

SECTION 2. 84.01 (13m) of the statutes is created to read:

84.01 (13m) ENGAGEMENT OF ENGINEERING SERVICES REPORTS. (a) Not later than December 1, 2013, and annually by December 1 of each year thereafter, the department shall submit to the chief clerk of each house of the legislature for distribution to ^{all members of the legislature,} ~~the speaker of the assembly and president of the senate and~~

~~1321211~~ a report limited to identifying all of the following:

and shall publish on the department's Internet web site,

ASSEMBLY BILL 522

1 1. The total cost of engineering services provided during the preceding fiscal
2 year on projects performed predominantly by employees of the department.

3 2. The total cost of engineering services provided during the preceding fiscal
4 year on projects performed predominantly through an engagement of services under
5 sub. (13).

6 3. The total cost of engineering services provided during the preceding fiscal
7 year on projects performed jointly through an engagement of services under sub. (13)
8 and by employees of the department.

9 (b) In computing the total cost of engineering services provided by employees
10 of the department under par. (a), the department shall include indirect costs
11 allocable to direct engineering labor. Allocations of indirect costs that are applied
12 equally to engineering services provided by the department's employees and to
13 engineering services provided through an engagement of services under sub. (13)
14 shall be excluded from the reporting of indirect costs.

15 **SECTION 3. Initial applicability.**

16 (1) The treatment of section 84.01 ~~(13)~~ of the statutes first applies to
17 engagements initially entered into on the effective date of this subsection.

18 **SECTION 4. Effective date.**

19 (1) This act takes effect on the first day of the 3rd month beginning after
20 publication.

21 **(END)**

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0319/lins
ARG:.....

1

2 **INSERT 1-2:**

3 (~~no~~ ~~¶~~) false claims made by state contractors, requiring the Department of
4 Transportation to report on the engagement of engineering services, and providing
5 penalties

6

7

SENATE BILL 447

INSERT
construction work, limited trades work, or engineering or architectural services
against the contractor or vendor for breach of contract. If the contractor or vendor is asked to swear to the truth of a claim for payment and the claim is false, the contractor or vendor may be prosecuted for false swearing. Currently, except with regard to medical assistance, a private person has no means to recover, on behalf of the state, damages sustained by the state as a result of a fraud committed against the state.

contractual
substitute amendment
This ~~bill~~ provides that whoever knowingly presents or causes to be presented a false claim under any contract or order for materials, supplies, equipment, ~~or~~ services to be provided to a state agency is subject to a forfeiture (civil penalty) of not less than \$5,000 nor more than \$10,000, plus three times the amount of the damages that were sustained by the state or would have been sustained by the state, whichever is greater, as a result of the false claim. The ~~bill~~ permits the attorney general to bring an action to recover any forfeiture for which a contractor or vendor is liable as a result of a false claim submitted to a state agency. ~~This bill contains similar provisions that apply to local governmental units.~~

The bill creates separate prohibitions against state contractors, grantees, vendors, and other recipients of state resources who knowingly commit certain fraudulent acts against the state. The bill makes these persons liable for treble the amount of damages sustained by the state resulting from such acts and imposes additional forfeitures of not less than \$5,000 nor more than \$10,000 for each violation. The bill permits the attorney general to pursue an alternate remedy, such as an administrative remedy, against an alleged offender in lieu of an action in court. With certain exceptions, the bill provides that a person who brings an action on behalf of the state is entitled to receive his or her reasonable expenses of bringing the action, including his or her costs and reasonable, actual attorney fees, which are assessed against the defendant.

The bill entitles an employee to all relief to make the employee whole if the employee is discriminated against by an employer as a result of lawful actions the employee took to further the investigation of any act of fraud, as defined in the bill, the employer committed against the state. Under the bill, the relief may include reinstatement and double back pay with interest from the time of any discharge to the time of reinstatement. The bill also permits the employee to recover any costs, including reasonable, actual attorney fees, from his or her employer.

This bill also does all of the following relating to state contracts:

1. Requires executive branch state agencies to submit to DOA and the Legislative Fiscal Bureau, by September 15 of the even-numbered year, information on the number of contracted positions, including the number of service hours and recurring service rate payments, providing services for the agency that are paid from the agency's base level funding and an identification of the appropriation or appropriations used to fund the contracted positions; the total amount of agency base level funding used to pay for the contracted positions; and the amount of funding requested for contracted positions and an identification of the appropriation or appropriations that will be used to fund the contracted positions.

2. Requires the secretary of administration to include in the biennial budget report all of the information specified in Item 1.

INSERT

SENATE BILL 447

SECTION 16

1 deadlines imposed by the federal government on the expenditure of the federal
2 economic stimulus funds cannot be met without an agency's entering into, renewing,
3 or extending a contractual services contract or a cost-benefit analysis is conducted
4 that demonstrates that a contractual services contract would be more cost effective
5 and efficient than having state employees perform the services.

6 (cm) Paragraph (b) shall not apply to contracts entered into, renewed, or
7 extended under s. 977.08.

8 (d) An agency in the executive branch may submit a written request to the joint
9 committee on finance to have par. (b) not apply to the agency with respect to a specific
10 contractual services contract. If the cochairpersons of the committee do not notify
11 the agency within 14 working days after the date of the agency's submittal that the
12 committee intends to schedule a meeting to review the request, approval of the
13 request is granted. If, within 14 working days after the date of the agency's request
14 submittal, the cochairpersons of the committee notify the agency that the committee
15 intends to schedule a meeting to review the request, the request may be granted only
16 as approved by the committee.

17 **SECTION 17.** 16.75 (1) (a) 4. of the statutes is created to read:

18 16.75 (1) (a) 4. The contracting agency shall electronically send the successful
19 bidder a letter of intent to contract and shall send electronic copies of the letter to all
20 other bidders.

21 **SECTION 18.** 16.771 of the statutes is created to read:

22 **16.771 False claims.** Whoever knowingly presents or causes to be presented
23 a false claim for payment under any contract or order for materials, supplies,
24 equipment, or contractual services to be provided to an agency shall forfeit not less
25 than \$5,000 nor more than \$10,000, plus 3 times the amount of the damages that

insert
2-1-23

INSERT

SENATE BILL 447

1 were sustained by the state or would have been sustained by the state, whichever is
2 greater, as a result of the false claim. The attorney general may bring an action on
3 behalf of the state to recover any forfeiture incurred under this section.

4 ~~SECTION 19.~~ [#] 16.871 of the statutes is created to read:

5 **16.871 False claims. (1)** In this section:

6 (a) "Agency" has the meaning given in s. 16.70 (1e).

7 (b) "Construction work" has the meaning given in s. 16.87 (1) (a).

8 (c) "Limited trades work" has the meaning given in s. 16.70 (7).

9 **(2)** Whoever knowingly presents or causes to be presented a false claim under
10 any contract for construction work or limited trades work, or for engineering or
11 architectural services, to be provided to any agency shall forfeit not less than \$5,000
12 nor more than \$10,000, plus 3 times the amount of the damages that were sustained
13 by the state or would have been sustained by the state, whichever is greater, as a
14 result of the false claim. The attorney general may bring an action on behalf of the
15 state to recover any forfeiture incurred under this subsection.

16 ~~SECTION 20. 20.932 of the statutes is created to read:~~

17 ~~**20.932 False claims; actions by or on behalf of state. (1)** In this section:~~

18 ~~(a) "Authority" has the meaning given in s. 16.70 (2).~~

19 ~~(b) "Claim" includes any request or demand for money, property, or services~~
20 ~~made to any officer, employee, or agent of this state, or to any contractor, grantee, or~~
21 ~~other recipient, whether or not under contract, if any portion of the money, property,~~
22 ~~or services that are requested or demanded is derived from state resources, or if the~~
23 ~~state is obligated to reimburse the contractor, grantee, or other recipient for any~~
24 ~~portion of the money, property, or services that are requested or demanded. "Claim"~~

Insert
2-1
conf/d

INSERT

SENATE BILL 447

SECTION 25

(b) "Public contract" means a contract for the construction, execution, repair, remodeling, or improvement of a public work or building or for the furnishing of supplies, equipment, material, or professional or contractual services of any kind.

(2) PRESENTATION OF FALSE CLAIMS. Whoever knowingly presents or causes to be presented a false claim for payment under any public contract with a local governmental unit shall forfeit not less than \$5,000 nor more than \$10,000, plus 3 times the amount of the damages that were sustained by the local governmental unit or would have been sustained by the local governmental unit, whichever is greater, as a result of the false claim.

~~SECTION 26. 84.01 (13) of the statutes is amended to read:~~

84.01 (13) ENGINEERING SERVICES. The department may engage such engineering, consulting, surveying, or other specialized services as it deems advisable. Any engagement of services under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.77, 16.78 to 16.82, and 16.85 to 16.87, 16.875 to 16.89, but ss. 16.528, 16.752, 16.753, and 16.754, 16.771, and 16.871 apply to such engagement. Any engagement involving an expenditure of \$3,000 or more shall be by formal contract approved by the governor. The department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed engagement under this subsection that involves an estimated expenditure of more than \$25,000 in accordance with standards prescribed by rule of the department. The department shall review periodically, and before any renewal, the continued appropriateness of contracting pursuant to each engagement under this subsection that involves an estimated expenditure of more than \$25,000.

~~SECTION 27. 84.06 (2) (a) of the statutes is amended to read:~~